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Details: Public Hearing – December 6, 2007

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Education (SC-Ed)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
 - Clearinghouse Rules ... **CRule**
 - Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
 - Miscellaneous ... **Misc**
- (**ajr** = Assembly Joint Resolution)
(**sjr** = Senate Joint Resolution)

MB



Wisconsin Manufacturers & Commerce

Memo

TO: Senate Education Committee
FROM: John Metcalf, Director, Human Resources Policy
DATE: December 6, 2007
RE: Opposition to Senate Bill 195 - Mandated School Conference and Activities Leave

Background

Both Wisconsin and Federal Law require employers with 50 or more employees to provide Family and Medical Leave (FMLA) to their employees. The length of leave entitlements vary between the State and Federal laws, as do the qualifying requirements, administration and remedies for violations of the two laws. Because of these variations the FMLA's are among the most complex that Wisconsin employers must administer.

School Conference and Activity Leave

SB 195 creates an additional leave entitlement of up to 16 hours of school conference and activities leave in a 12-month period under Wisconsin's FMLA for **any** employee of an employer, employing at least 50 individuals on a permanent basis in this state. School conference and activities leave may be taken to attend school conferences or classroom activities relating to the employee's child that cannot be scheduled during nonworking hours. In addition, school conference and activities leave may be taken to observe and monitor the day care, preschool, or pre-kindergarten services or programming received by an employee's child, if that observation and monitoring cannot be scheduled during nonworking hours.

Substitution of Paid Leave

An employee **may substitute**, for portions of school conference and activities leave, other types of paid or unpaid leave provided by the employer, except that an employee may not substitute paid leave of less than an hour for school conference and activities leave for attending a school conference or activity.

Notice of Leave

An employee who intends to take leave to attend a school conference or activity must give the employer advance notice of the conference or activity and must make a reasonable effort to schedule the conference or activity so that it does not unduly disrupt the operations of the employer.

Definition of School

"School" is defined as: a day care center; a day care program established or contracted for by a school board; a public or private preschool or pre-kindergarten; or a public or private school that provides an educational program for one or more grades between kindergarten and 12.

WMC POSITION – OPPOSE

WMC strongly supports conformity of the existing federal and Wisconsin FMLA's that are currently difficult to administer. Until broad conformity occurs between Wisconsin's FMLA and the federal FMLA, WMC opposes any expansion of the state FMLA, including the creation of an additional form of mandated leave. Further, in any given session of the U.S. Congress and the Wisconsin Legislature, numerous proposals to expand the existing state and federal FMLA's are proposed, as well as to mandate further types of leave for other reasons. However, no legislation has been enacted to attempt to coordinate these mandates – creating a significant and growing problem with the administration of mandated as well as employer provided employee leave benefits in U.S. and Wisconsin work places.

Therefore, we urge you to vote **against** SB 195.





Wisconsin

Memorandum

TO: Members of the Senate Committee on Education

FROM: Bill G. Smith, State Director

DATE: December 6, 2007

RE: Senate Bill 195 – School Conference and Activities Leave

This legislation is introduced with all the best intentions, and I can assure members of the committee, small business employers share the author's commitment to policies that will improve public education in Wisconsin.

NFIB members understand the importance of parental involvement in the education of their children and the value of their participation in legitimate school-related activities.

Although only 16 percent of our members have an official policy governing short periods of leave such as parent-teacher conferences, 91 percent of small business employers typically grant requests for leave when adequate notice is provided, according to studies by NFIB's Research Foundation.

Small business owners believe it is very important they have the flexibility to respond to personal leave requests that will minimize any negative impact on other employees in the workplace. Eighty-one percent, according to research by NFIB, handle personal leave requests on a case-by-case basis.

Therefore, 87% of Wisconsin's NFIB members responding to a survey study are opposed to legislation that requires employers to provide employees time off from work to attend the school activities of their children.

On behalf of Wisconsin's small business community, I respectfully urge members of the committee to oppose passage of Senate Bill 195.

Thank you for your consideration.



WISCONSIN EDUCATION ASSOCIATION COUNCIL

Affiliated with the National Education Association

*Every kid
deserves a
Great School!*

Testimony in Support of SB 195 by Beth Oswald before the Senate Committee on Education December 6, 2007

Thank you for allowing me to speak in support of Senate Bill 195 and the proposed amendments to the Wisconsin Family and Medical Leave Act which would expand the law to include school conferences and activities. I'm Beth Oswald, and I have taught seventh grade world history at J. C. McKenna Middle School in Evansville, Wisconsin for the past eleven years since graduating Phi Beta Kappa from Beloit College in 1995. I received my Master of Education and Professional Development degree from the University of Wisconsin – La Crosse in 2003, and have continued my education by, most recently, completing a hands-on "Archaeology for Educators" program there as well. The past year has been an exciting one for me, as I received the Kohl Fellowship last spring, was selected as Wisconsin's Middle School Teacher of the Year this fall, and, following an intense interview process, I am currently serving as Wisconsin's Teacher of the Year. As Wisconsin's representative for National Teacher of the Year, I believe I speak for all Wisconsin educators when I say I wholeheartedly support Senate Bill 195, and believe it would do much to improve the educational system.

As an educator, I have found that as kids get older, parents become less involved with their children's education. This decline in involvement does not happen because parents *care* less about what happens at school, rather it occurs due to the nature of adolescents – they wish to be more independent, and therefore, tend to share less information about their school experience. For this reason, we have begun holding student led conferences, where kids share portfolios of their work along with academic and personal goals. Parents have been overwhelmingly positive about this style of

Mary Bell, President
Dan Burkhalter, Executive Director



conference, and state they enjoy seeing what their children are learning, hearing about their perceived strengths and weaknesses, and discussing their short and long-term goals. Having the student, parent(s), and teacher all sitting together discussing learning and its impact on the future of that young person is a very powerful thing. It sends a strong message that we are a team, united in helping that student be successful. Unfortunately, not all parents are able to attend these conferences due to their work schedules.

This problem is nothing new – there have always been a number of parents unable to attend conferences due to scheduling conflicts. This year only two of my 15 homeroom students' parents could not attend on conference night. Our staff received 1/2 day of compensation the next day, and could leave school at 12:10, so I scheduled these conferences then. Our staff regularly arranges for conferences to be held at alternate times to accommodate parents' work schedules. And regardless of the fact that these rescheduled conferences usually occur on our own personal time – before school or during our compensation time – we do so because we know the *value* of meeting face to face with our students' parents.

One of these valuable rescheduled conferences was for “Danny” and his adopted mom. Danny stated his mom could not attend on conference night. He thought (okay, he’s a teenager, rather “hoped”) that would be the end of it, but after many phone messages on both ends, I arranged for his conference to be held the next day during my compensated time. I’m glad we rescheduled, because after Danny shared his portfolio, his mom shared numerous concerns for, and insights into, her son. He has ADHD, I learned, and was already falling behind in some of his classes – so we arranged for him to check-out each day with me before leaving school to be sure he had all his homework, then do the same thing with his mom in the morning to be sure he had all he needed to be successful for the day. She also shared that he would be receiving counseling related to his mother’s death and sibling

issues, and asked me to share any changes in behavior or mood I, or any other seventh grade teachers, may observe so she could share this information with the counselor. Our 20-minute conference became nearly an hour – an hour that would not have happened had I not pushed for the conference to occur at a different time – and an hour that turned out to be tremendously beneficial in contributing to the success of a 12 year-old boy. I truly believe that without the face-to-face personal contact with Danny’s mom, she would not have felt comfortable sharing this important personal information with me, and maybe would not have shared it at all.

In my experience, I have found that parents who attend conferences are more likely to initiate contact with their child’s homeroom teacher with concerns about their child’s academic *and* emotional well being – probably because they now have a comfort level with that staff member. These parents are also much more likely to respond in a positive manner when contacted regarding any concerns staff may have about their child, as they now see teachers as partners, rather than adversaries. Additionally, once parent teacher relationships are formed through contact at open house and conferences, parents tend to feel more comfortable attending school-day activities like our Toga and Medieval Days’, or chaperoning field trips.

Such parent-staff-student relationships are difficult to develop and foster without initial, and continued, in-person meetings. Senate Bill 195 would help these relationships occur, by giving employees the *right* to attend such valuable and vital school conferences and activities. And while we cannot mandate that parents attend their children’s conferences and meetings, this bill would go a long way toward making it easier for parents who “wish they could attend,” to actually do so.

For all of these reasons, please pass Senate Bill 195. Thank you again for your time and consideration.





Wisconsin State AFL-CIO *...the voice for working families.*

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

TO: Senate Education Committee
FROM: Phil Neuenfeldt, Secretary-Treasurer
DATE: December 6, 2007

RE: **SUPPORT FOR SENATE BILL 195**
Extends Family & Medical Leave to School-Related Activities

This legislation provides a much needed expansion of rights under Wisconsin's Family and Medical Leave Act which would make it easier for working parents to be involved in their children's education and monitor their care. Research has shown that parental involvement is more important than family education level or income in determining student achievement. The 16 hours of leave that SB 195 allows for parents to participate in school activities, or monitor the child care or preschool their children receive, should be viewed by employers as a good investment in the future. Under Wisconsin's Family and Medical Leave Act, employees can substitute their earned paid leave for the time taken.

SB 195 would be the first improvement in our Family and Medical Leave Act since it passed in 1988. This is further evidence of the woefully inadequate pace in which employment policy and public policy are changing to address the realities of workers' lives. Given that in most families both parents are in the workforce, and there are many single-parent households, the right to take time off from work to be involved in a child's education or care—and not fear retaliation from the employer—is more important than ever.

We urge your support for SB 195.





WISCONSIN EDUCATION ASSOCIATION COUNCIL

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*Every kid
deserves a
Great School!*

MEMO

TO: Members of the Senate Committee on Education

FR: Deb Sybell, Legislative Program Coordinator

DA: December 6, 2007

RE: SB 195 (School Conference and Activities Leave)

The Wisconsin Education Association Council support Senate Bill 195 allowing parents to take up to 16 hours of leave time from work to participate in children's school activities and conferences that cannot be scheduled during nonworking hours.

Parental involvement helps children to be successful in school. Parents are an important part of an education team which includes student, educators and communities working together for a brighter future. When parents are involved, their children achieve higher grades and test scores, develop better attitudes and behavior, attend school more regularly, complete more homework, graduate from high school and enroll in postsecondary education.

Great schools benefit everyone and making it easier for parents to get time off of work to attend teacher conferences and student activities will increase parental involvement and enhance children's chances for success in school.

According to the Education Commission of the States, at least 15 states encourage, urge, expect or direct employers to enable parents to attend school activities such as parent/teacher conferences: Alabama, California, Colorado, Hawaii, Illinois, Louisiana, Minnesota, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah and West Virginia.¹

State	Enacted	Summary
Alabama	1994	Encourages the business community and governmental agencies to give administrative leave to parents for the purpose of parent-teacher conferences and involvement in other educational experiences of the child (ALA. ACTS 159).
California	1990	Prohibits employers with at least 25 employees from firing or in any way discriminating against an employee for taking off up to 40 hours each year to participate in school-related activities, subject to a limitation of eight hours in any calendar month. Employees must give reasonable notice to their employers and may be required to provide proof of attendance. Employees must utilize existing vacation, personal leave or compensatory time off, unless otherwise provided for by a collective bargaining agreement. An employee also may utilize

¹ <http://www.ecs.org/clearinghouse/59/11/5911.pdf>

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		time off without pay for this purpose. Employees discharged, threatened with discharge, demoted, suspended or in any other manner discriminated against for taking time off to participate in school activities is entitled to reinstatement and reimbursement for lost wages and work benefits (CAL. LAB. CODE § 230.8).
Colorado	1996	Supports parental involvement in the public schools and encourages parents to visit their children's classrooms at least once a semester. Encourages businesses with more than 10 employees to allow each employee at least two hours per school semester to attend parent-teacher conferences, special presentations and school-related committees. Also encourages the recognition of businesses that show their commitments to children and education through their understanding of the importance of parental involvement (COLO. S.J.R. 15).
Hawaii	2003	Public employees are eligible for at least two hours of paid leave during normal business hours to attend parent-teacher conferences for K-12 students or parent-caregiver conferences for preschool-aged children. The leave will not be credited against vacation or sick time. The provision of paid leave must not adversely interfere with the operations of the workplace nor require the applicable agency to incur additional human resources or overtime costs. The employee may take no more than two conferences per child in a single calendar year and travel time is included as part of the two hours (HAW. REV. STAT. § 78-31).
Illinois	1993	An employer must grant up to eight hours leave during any school year for employees to attend school conferences or classroom activities related to their children if the conference or classroom activities cannot be scheduled during non-work hours. No leave may be taken unless the employee has exhausted all leave that may be granted, except sick and disability leave. The employee must provide the employer with a written request for leave at least seven days in advance. In emergency situations, no more than 24 hours notice is required. The employee must consult with the employer to schedule the leave so as not to disrupt unduly the operations of the employer. The employer is not required to issue paid leave (ILL. REV. STAT. CH 820 § 147/15).
Louisiana	1993	An employer may grant an employee leave from work of up to a total of 16 hours during any 12-month period to attend, observe or participate in conferences or classroom activities related to the employee's children that are conducted at the child's school or day care center, if the conferences or classroom activities cannot be scheduled during non-work hours. Employees must provide reasonable notice and make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer. An employer is not required to pay an employee for any time taken as leave. An employee is permitted to substitute any accrued vacation time or other appropriate paid leave (LA. REV. STAT. ANN. § 1015.2).
Minnesota	1990 (last	An employer must grant an employee leave of up to a total of 16 hours

	amended 2003)	during any 12-month period to attend school conferences or school-related activities related to the employee's child, provided they cannot be scheduled during non-work hours. When the need for the leave is foreseeable, the employee must provide reasonable prior notice and make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer. An employer is not required to grant paid leave, although an employee may substitute any accrued appropriate paid leave (MINN. STAT. ANN. § 181.9412).
North Carolina	1993	Allows four hours unpaid leave per year to any employee who is a parent or guardian of a school-aged child so that the employee may attend or otherwise be involved at that child's school. The leave must be at a mutually agreed upon time between the employer and the employee and the employer may require an employee to provide a written request for the leave at least 48 hours before the time desired for the leave. The employer may also require that the employee furnish written verification from the child's school that the employee attended or was otherwise involved at that school during the time of the leave (N.C. GEN. STAT. § 95-28.3).
Oklahoma	1989	Directs the state board to establish a program encouraging private employers to give employees leave to attend parent-teacher conferences at least once each semester. Also directs the state board to require school boards to develop initiatives promoting schools as congenial places for parents to visit. Establishes state board policy to encourage public schools to explore outreach opportunities (OKLA. STAT. TIT. 70 § 10-105.2).
Oregon	1995	The state legislature recommends that (1) school districts provide opportunities for parents or guardians to be involved in establishing and implementing educational goals and to participate in decision-making at the school site, (2) employers recognize the need for parents or guardians and members of the community to participate in the education process not only for their own children but for the educational system, (3) <i>employers be encouraged to extend appropriate leave to parents or guardians to allow greater participation in that process during school hours</i> , (4) school districts enter into partnerships with business, labor and other groups to provide workplace-based professional development opportunities for their educational staff and (5) school districts enter into partnerships with recreation groups, faith-based organizations, social service and health care agencies, businesses, child care providers and other groups that support children and families to create community learning centers for students, parents and members of the surrounding community (OR. REV. STAT. § 329.125).
South Carolina	2000	The education oversight committee, in cooperation with representatives of the department of commerce, the department of revenue, and the South Carolina chamber of commerce, will develop recommendations for employer tax credits as incentives to: (1) <i>provide parent-employee release time for parent-teacher conferences or attendance at their children's academic-related events without loss of pay</i> and (2) develop workplace policies which enable parents to

		improve their literacy, assist their children with academics, and become more involved in their child's education as a result of employers working with local school officials (S.C. CODE ANN. § 59-28-220).
Tennessee	2000	Urges employers to excuse employees from work to attend parent-teacher conferences when given 24-hour notice (TENN. H.J.R. 56)
Texas	1997 (renumbered 1999, amended 2003)	Employees may use up to eight hours of sick leave each fiscal year to attend parent-teacher conferences for their children in grades K-12. An employee must give reasonable advance notice to their employer (TEX. EDUC. CODE ANN. § 661.206).
Utah	1996 (amended 2000)	Recognizing the importance of parental participation in the educational process, it is state policy to encourage parents to provide a home environment that values education and send their children to school prepared to learn, rely upon school districts and schools to provide opportunities for parents of students to be involved in establishing and implementing educational goals and <i>expect employers to recognize the need for parents and members of the community to participate in the public education system in order to help students achieve and maintain excellence</i> . Local school boards must adopt policies on parental involvement. Policies must provide parents with the opportunity to be actively involved in their child's education and inform them of the importance of their involvement in directly affecting the educational success of their child (UTAH CODE ANN. § 53A-1A-105).
West Virginia	1990 (last amended 2003)	Establishes local school improvement councils at every school. School improvement councils may receive school of excellence awards and competitive grant awards and expend such grants. In order to promote innovations and improvements at the school, a school improvement council will receive cooperation from the school in implementing policies and programs it may adopt for a number of purposes, including to encourage the involvement of parents or guardians in their child's educational process and in the school <i>or to encourage businesses to provide time for their employees to meet with teachers concerning their child's education</i> (W. VA. CODE § 18-5A-2).

Please support Senate Bill 195.

If you have any questions, contact Deb Sybell, WEAC Legislative Program Coordinator, at (608) 298-2327.





WISCONSIN CATHOLIC CONFERENCE

TO: State Senator John Lehman, Chair
Members, Senate Committee on Education

FROM: Kim Wadas, Associate Director 

DATE: December 6, 2007

RE: Senate Bill 195, Parental Involvement in School Conference and Activities

The Wisconsin Catholic Conference strongly supports Senate Bill 195, which allows employees to take leave from work to attend a child's day care or school function.

By allowing parents the flexibility to attend important school functions and to play a direct role in the daily instruction of their children, SB 195 would facilitate an essential element of successful education, parental involvement. In his 1981 encyclical letter, *On Human Work*, Pope John Paul II discussed the relationship between work and family life at some length. In his discussion the Pope said the following:

"These two spheres of values—one linked to work and the other consequent on the family nature of human life—must be properly united and must properly permeate each other... Two aspects of work in a sense come into play here: the one making family life and its upkeep possible, and the second making possible the achievement of the purposes of the family, especially education." (#11)

The Pope continued by stating that work itself should be:

"organized and adapted in such a way as to respect the requirements of the person, and his or her forms of life, above all life in the home." (#19)

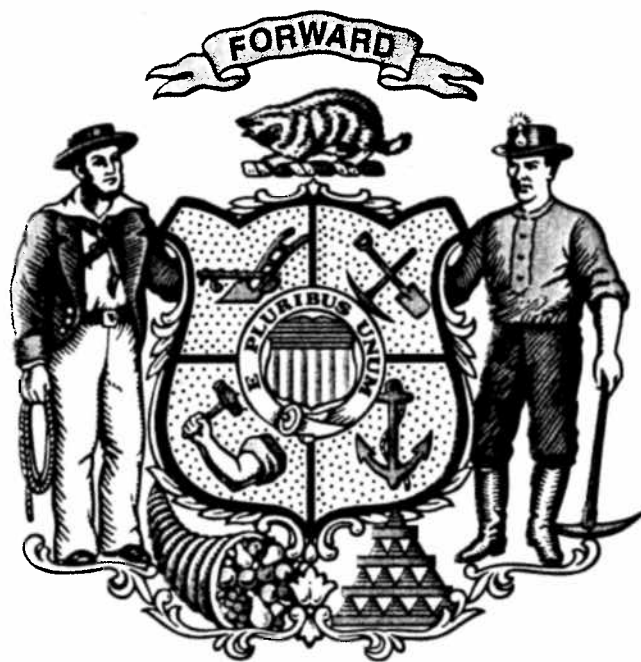
These ideas are echoed by the Catholic bishops of the United States in their pastoral letter, *Economic Justice for All*, and in their 1992 statement, "Putting Children and Families First." The American bishops have emphasized that the true measure of an economy is not just what it produces but whether or not it protects human dignity and promotes family life. Giving employees time off to attend to their children's educational needs does just that.

As the bishops reflected in *Economic Justice for All*, "economic and social policies of the work world should be continually evaluated in light of their impact on the strength and stability of family life," (#93). The well-being of families is a proper concern for government and public authorities. In several ways, the political community has a duty to honor the family, to assist it, and to ensure that a variety of goods are available to families in order to meet their responsibilities to one another and the broader community.

SB 195 is consistent with these values. It affirms and encourages parents to be more involved in the education of their children by being present at school for significant events in the educational life of their child. By restructuring the workplace to make room for school visits, the bill represents a commitment by the rest of us as “indirect employers” to support parents in their roles as primary educators.

By allowing parents to attend and participate in school and day care activities, we affirm our commitment to make the family an integral part of education in the State of Wisconsin.

The WCC urges your support for SB 195.



SHRM

SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

FMLA

An Overview of the 2007 FMLA Survey

FMLA

Family Medical Leave Act
enacted by U.S. Congress in 1993

Key findings

- Almost one-half of HR professionals experienced challenges in administering/granting leave under the FMLA for employees' episodic conditions.
- Employees often do not provide advance notice of FMLA leave; typically less than one week's notice is given for a serious health condition as a result of a catastrophic event or episodic condition.
- Tracking/administering intermittent FMLA leave was identified as the most difficult activity by eight out of 10 organizations.
- About four out of 10 HR professionals reported having approved FMLA requests that they believed to be illegitimate but felt they had to grant due to FMLA regulations and interpretations.
- The FMLA and its regulations have had the greatest negative impact on employee absences, employee productivity and business productivity.

A Publication of the Society for
Human Resource Management

According to the Family and Medical Leave Act of 1993 (FMLA), regular employers with 50 or more employees within a 75-mile radius of the work location must provide eligible employees up to 12 weeks of unpaid, job-protected leave each year for one or more of the following reasons:

- » For a serious health condition that makes the employee unable to perform his or her job.
- » To care for an employee's spouse, son, daughter or parent who has a serious health condition.
- » To care for the employee's child after birth or placement for adoption or foster care.

Regulations issued by the U.S. Department of Labor (DOL) define key terms related to FMLA leave rights and specify procedures for implementation of the Act. The existing FMLA regulations have been in place for 14 years and were under review by the DOL at the time of writing.

FMLA Provisions

The FMLA mandates up to 12 weeks of unpaid leave in a 12-month period for certain medical and family reasons. Some organizations offer job-protected leave beyond what is required by the FMLA. Less than one-half of HR profes-

sionals (44%) indicated that their organizations offered job-protected leave beyond federal FMLA provisions. These organizations varied in terms of the form or manner in which they extended the FMLA requirement. The three most common situations in which organizations offered job-protected leave beyond federal FMLA provisions included: 1) substituting accrued sick/vacation leave for FMLA leave (51%); 2) allowing more than 12 weeks of job-guaranteed leave (48%); and 3) offering job-protected leave to employees who have been employed for less than 12 months (41%). These data are depicted in Figure 1.

Use of the FMLA and Advance
Notice of Leave

Overall, most HR professionals agreed (responded "somewhat agree" or "strongly agree") that there have been a greater number of employee requests to take FMLA leave in the past five years compared with 10 years ago. The top three types of leave were: 1) employee's serious health condition as a result of an episodic condition (81%); 2) maternity, birth or adoption of a child (73%);¹ and 3) care for a parent with a serious health condition (72%). On average, HR professionals reported that 8% of employees at their organization took FMLA leave in the past 12 months. Of the FMLA leave taken by employees, more than one-third of the leave was for family-related reasons (average of 38%) and more than one-half was for medical reasons (average of 59%). According to HR professionals, 32% of FMLA leave was taken for episodic conditions.

One of the challenges of the FMLA is that employees are sometimes unable to promptly notify their employers when they need to take FMLA leave, especially in unexpected circumstances. Currently, FMLA regulations require that employees provide their employers with at least a 30-day notice before their FMLA leave is to begin, unless the need for leave is unforeseeable, in which case the employee shall provide notice that is "practicable." HR professionals indicated that employees provided

Key Terms

- » *Serious health condition* entitling an employee to FMLA leave means an illness, injury or impairment, or physical or mental condition as defined under the Act.
- » *Family-related reasons* include maternity, birth or adoption of a child or newly placed foster child.
- » *Medical reasons* include an employee's serious health condition or care for a child, spouse or parent who has a serious health condition.
- » *Catastrophic event* includes serious accidents, serious injuries and/or life-threatening diseases.
- » *Episodic condition* includes ongoing injuries, ongoing illnesses and/or non-life-threatening conditions.

SB 195 ?

an average of 61 days of advance notice when using the FMLA for maternity, birth or adoption of child or newly placed foster child. The number of days ranged from 0 to 270 (nine months). Conversely, most HR professionals indicated that employees provided less than one week's notice for a serious health condition as result of a catastrophic event (74%) or episodic condition (57%), making it difficult for HR professionals to plan for employees' absences. For catastrophic events, it comes as no surprise if an employee only provides notice on the same day of leave (as reported by 50% of respondents) since some events are truly unforeseeable. These data are illustrated in Figure 2.

Challenges With the FMLA

Although certain provisions of the FMLA are favorable for both employees and employers, HR professionals have struggled with several aspects of the FMLA, particularly with intermittent leave, the definition of a serious health condition, medical leave certification and determining overall costs.

In November 2006, SHRM conducted two polls on the specific challenges that organizations encountered when employees used FMLA leave for various circumstances.^{2,3} These polls found that overall the most frequently cited organizational challenges with the FMLA were: 1) costs associated with labor; 2) loss of productivity; 3) compliance and leave tracking; 4) tracking and chronic abuse of intermittent leave; 5) morale problems with employees asked to cover for an absent employee; 6) vague documentation of the medical leave certification; and 7) legitimacy of the leave.

HR professionals were asked to indicate the extent to which various FMLA-related activities were difficult for their organizations to administer (see Figure 3). The top three most difficult ("somewhat difficult" or "very difficult") activities cited were as follows:

Tracking/administration of intermittent leave: Tracking/administering intermittent FMLA leave was identified as the most difficult activity

for organizations (80%). Currently, FMLA regulations specify no minimum increment of intermittent leave, though an employer may limit leave to the shortest period of payroll time, as long as that period is an hour or less.

Determination of overall FMLA costs:

Determining an organization's overall costs incurred while complying with requirements of the FMLA was found to be a difficult activity for most HR professionals (79%). HR professionals may experience difficulties in determining costs because the FMLA can have various financial implications on an organization, such as lost productivity, replacement costs and continuation of benefits.

Determination of intermittent serious health conditions:

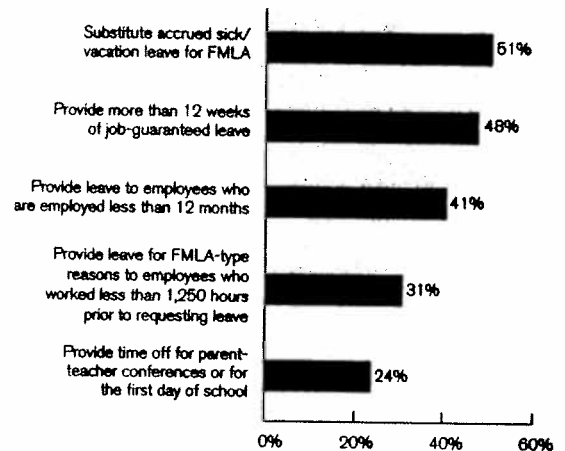
Nearly three-fourths (73%) of HR professionals reported difficulties determining whether an intermittent serious health condition should be protected by the FMLA. As defined under the Act, a serious health condition entitling an employee to FMLA leave means an illness, injury or impairment, or physical or mental condition. Under some circumstances, employees may take FMLA leave intermittently by taking leave in blocks of time or by reducing their normal weekly or daily work schedule.⁴ As cited in the 2006 polls, some HR professionals have found DOL regulations, guidance and opinion letters to be contradictory and confusing

for various types of FMLA leave. As a result, it may not always be clear to employers what

Figure 1

Top Ways Organizations Offered Job-Protected Leave Beyond Federal FMLA Provisions

(n = 204)

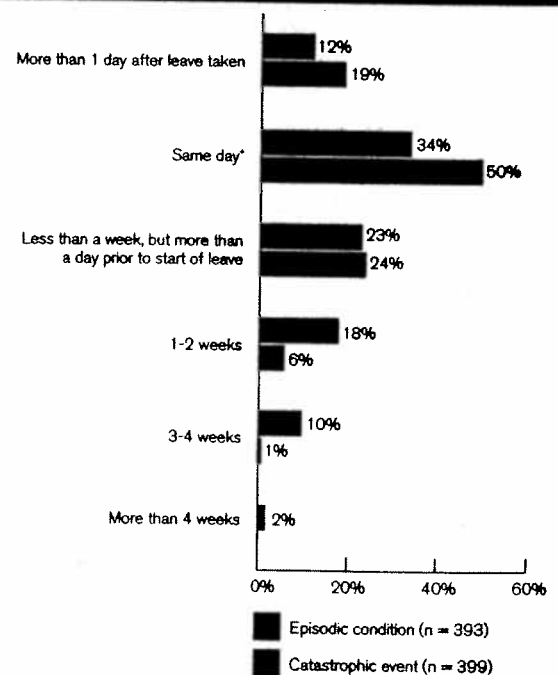


Note: Only respondents who indicated that their organizations offered job-protected leave beyond federal FMLA provisions (44%) were asked this question. Percentages do not total to 100% as respondents were allowed multiple choices.

Source: SHRM Survey Brief: FMLA

Figure 2

Amount of Advance Notice Provided by Employee When Taking FMLA Leave for a Serious Health Condition



*In the survey, this item was posed as two items, "same day, but at or after the start of leave" and "same day, but prior to start of leave." For reporting purposes it was decided to group these two items together.

Note: Percentages do not total to 100% due to rounding.

Source: SHRM Survey Brief: FMLA

specific conditions, and under what circumstances, qualify as a serious health condition.

Legitimacy of FMLA Cases

The sometimes contradictory and confusing aspects of the DOL information on the FMLA may leave employers feeling uncertain when administering the FMLA. In some cases, employers may perceive employee requests for FMLA leave as illegitimate but still feel the need to grant the leave, perhaps to avoid liability. About four out of 10 (39%) HR professionals reported having approved FMLA requests that they perceived to be illegitimate but felt they had to grant due to DOL regulations and interpretations (see Figure 4).

HR professionals were asked to provide written comments on FMLA cases that they perceived as illegitimate. There were several main themes that arose from their comments, and they are summarized below.

Intermittent leave administration: Some of the most frequently voiced issues were about the administration and abuse of the FMLA, particularly with respect to intermittent

leave. The unpredictable nature of certain conditions and conditions that are difficult to prove medically (e.g., migraines), do not necessarily require a doctor's visit (e.g., seizures) or where medical recertification was not allowed (e.g., diabetes) posed challenges for HR professionals. In addition, due to the broad definition of serious health conditions, HR professionals questioned the use of FMLA leave for specific conditions such as migraines, allergies, asthma, stress-related reasons (anxiety, depression, change in work environment/expectations), flu, cold, back problems, bronchitis, elective surgery and care for a child/spouse/parent.

Intermittent leave timing: The timing of the intermittent leave has also raised suspicions of abuse. Leave may be taken or extended beyond what seems necessary, and absences tend to occur regularly around specific days or times of the year. For example, HR professionals reported that it was common for employees to take intermittent leave around the weekends, regularly scheduled days off and holidays or when the weather was nice. In other situations, leave may have been used when an employee was losing interest in his or her job or avoiding/delaying disciplinary action due to poor performance.

Validity of documentation/medical certification: The validity of the documentation and medical leave certification from health care professionals was questioned by HR professionals. Respondents cited instances where physicians asked employees how many days they wanted off. In addition, HR professionals also reported examples of paperwork being backdated, conditions being exaggerated to meet qualifications, allowing more time than what really seemed neces-

Figure 4

FMLA Requests Perceived as Illegitimate but Granted Due to DOL Regulations/Interpretations

(n = 415)

Yes
39%

No
61%

Source: SHRM Survey Brief: FMLA

sary (e.g., employee could have worked or at least worked with restrictions) and an attitude that all illnesses fall under a serious health condition. The fact that there is little to no recourse in following up on suspicious absenteeism was a commonly shared sentiment among HR professionals.

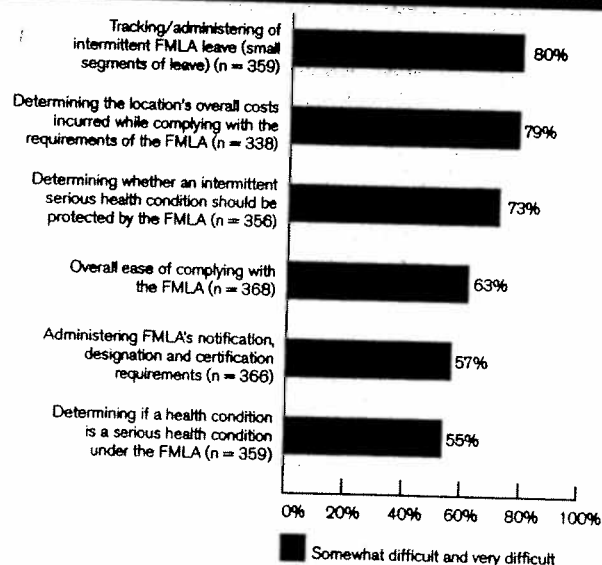
Consequences of the FMLA in the Workplace

FMLA leave has benefited millions of employees in helping to meet their particular family and medical needs. However, when employees use the FMLA, it may create job disruptions and have adverse effects on the workplace in terms of additional costs and a loss of productivity. As illustrated in Figure 2, it is not unusual for an employer to receive notice on the same day of the employee's absence for a serious health condition. Employers may opt to hire a temporary worker or have the work go unfinished, but typically other employees are asked to step in and help cover the absent worker's duties. Eighty-eight percent of organizations often ("often" or "extremely often") assign work temporarily to other employees during an employee's FMLA leave, and this, in turn, may affect employee morale and productivity.

HR professionals were asked about the effects that the FMLA and its regulations had on their organizations (see Figure 5). Overall, FMLA and its regulations have had the most negative impact on employee absences (63%), employee productivity (55%) and

Figure 3

Top Difficulties in Administering FMLA-Related Activities



Note: Percentages are based on a scale where 1 = "very easy", 2 = "somewhat easy", 3 = "somewhat difficult" and 4 = "very difficult." The data in this figure represents those HR professionals who answered "somewhat difficult" and "very difficult."

Source: SHRM Survey Brief: FMLA

business productivity (54%). The majority of HR professionals reported that the FMLA and its regulations had “no noticeable effect” (neither “positive effect” nor “negative effect”) on employee career advancement (89%), business growth (86%), employee recruitment (86%) and external perception of the company (82%).

SHRM members can download the survey brief and full survey report, titled *FMLA and Its Impact on Organizations*, free of charge at www.shrm.org/surveys.

Endnotes

¹ In the survey, this item was posed as two items, “maternity” and “birth or adoption of a child.” For reporting purposes, it was decided to group these two items together when the responses were consistent with one another.

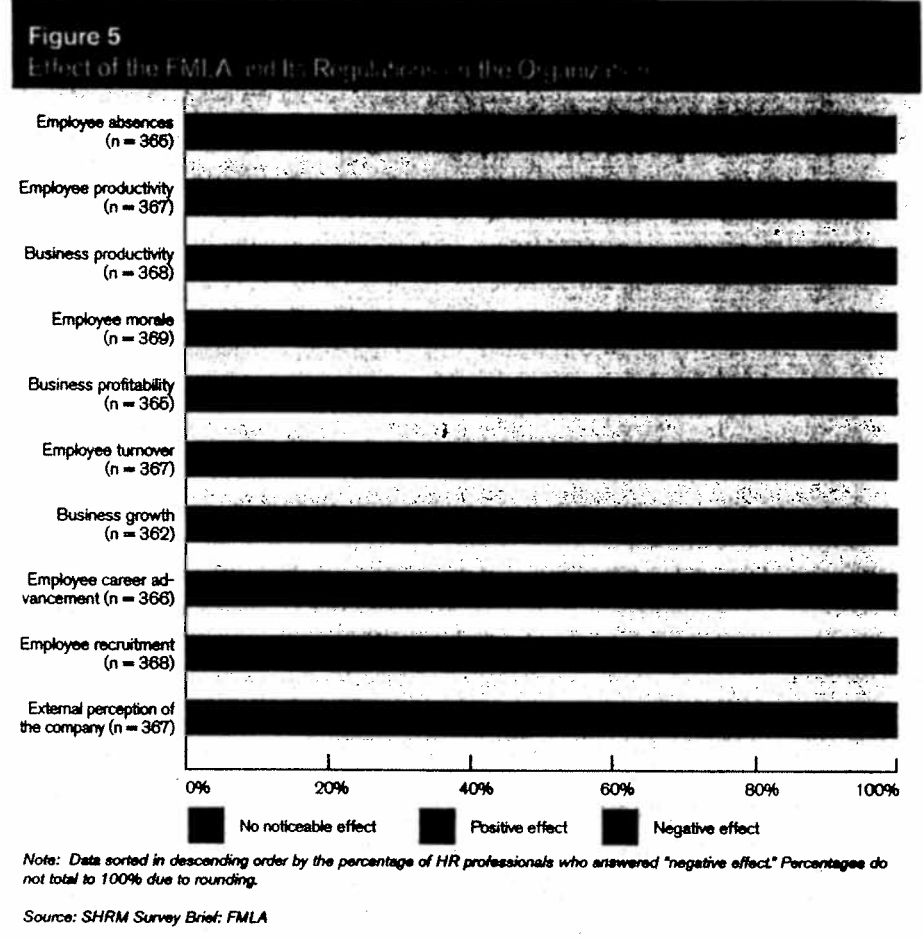
² Society for Human Resource Management. (2006, November 7). Has your organization experienced challenges in granting leave under FMLA? [SHRM Weekly Survey]. Retrieved February 15, 2007, from www.shrm.org.

³ Society for Human Resource Management. (2006, November 15). Leave administration challenges under FMLA for the birth or adoption of a child [SHRM Weekly Survey]. Retrieved February 15, 2007, from www.shrm.org.

⁴ U.S. Department of Labor Employment Standards Administration Wage and Hour Division. *Fact Sheet #28: The Family and Medical Leave Act of 1993*. Retrieved April 30, 2007, from www.dol.gov.

Methodology

In January 2007, the Society for Human Resource Management (SHRM) conducted a workplace survey of human resource professionals about the impact of the Family Medical Leave Act on their organizations (the survey instrument is available upon request by contacting the SHRM Survey Program at surveys@shrm.org or by phone



at 703-535-6301). An e-mail that included a link to the online survey was sent to 3,300 randomly selected SHRM members. Of these, 2,989 e-mails were successfully delivered, and 610 HR professionals responded, yielding a response rate of 20%. Of the 610 HR professionals who responded to the survey, 89 responses were submitted by HR professionals whose organizations were not required to comply with the FMLA. Since the study focused specifically on FMLA-related compliance issues, these HR professionals were excluded from the study (even though their organizations may voluntarily comply with the FMLA). Some organizations may have locations in multiple states or internationally; however, HR professionals were asked to think of the FMLA only at their location when answering, unless otherwise specified. The survey was online for a period of two weeks, and four e-mail reminders and a fax reminder were sent to nonrespondents in an effort to increase response rates.

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About SHRM

The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. The Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 225,000 members in over 125 countries and more than 575 affiliated chapters. Visit www.shrm.org.

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Special Report

The Best States For Business

Kurt Badenhausen, 07.11.07, 6:00 AM ET

SB 195?

You use its products every day—when you take a cross-country flight on a Boeing jet, when you sip your morning Starbucks coffee, when you order the latest Harry Potter book from Amazon.com and when you use the Microsoft operating system on your PC. Washington state is home to these companies and more, befitting the state's tagline, "Innovation is in our nature."

In Forbes.com's second annual Top States for Business, Virginia may be the top-ranked state for the second straight year, but Washington is the big story. The biggest mover (tied with Tennessee), rising from 12th to fifth place, Washington is also the only state to finish in the top five in three main categories (labor, regulatory environment and growth). And Washington's numbers are up across the board when you look both backward and at projections into the future.

In Pictures: The Best States For Business

Table: The Best States For Business

"We're blessed by birth. We have an innovative spirit in the state," says Washington's Gov. Christine Gregoire, who adds: "We've made improvements to get out of the way and let innovation and creativity take over."

Not that Virginia did badly—it just didn't dominate the rankings the way it did last year. The state finished in the top 10 in four of the six main categories we examined. But in 2006, it finished in the top 10 of all of them. Virginia's top attributes include an incentive environment that is the fourth-best in the country, according to Pollina Corporate Real Estate, a commercial real estate consulting firm, as well as an unemployment rate that's the third lowest in the nation.

Moving up to the second spot this year was Utah, from fourth place in 2006. Utah benefited from low business costs (9% below the national average) and a strong current economic environment. The state's five-year job growth rate jumped to 1.8%, from 1.3% last year, while incomes growth improved to 3.2%, from 2.2%.

Our second runner-up was North Carolina, whose capital, Raleigh, is our best metro area for business and careers. North Carolina has the second-lowest labor costs in the country (18% below the national average), and incomes are projected to increase 3.8% annually over the next five years, the second-fastest rate in the country.

We have been ranking the Best Metro Areas For Business and Careers for nine years, and this ranking of states looks at many of the same factors, including business and living costs, job and income growth and educational attainment. But we go a step further with this ranking in several ways.

First, we look at projections of job, income and gross state product growth. We also examine venture capital money going into an area as well as new businesses that have cropped up in the past three years. Another addition is the role that government plays on the business climate in terms of environmental and labor laws, as well as taxes and incentives. These factors play out on the state level instead of on the local level. Overall, we

examine 32 criteria to assemble the list.

One of Washington's big strengths is reduced red tape. The Office of Regulatory Assistance helps individuals and businesses sort through the many layers of government regulation all in one place. If a number of state agencies need to be contacted for a new business to obtain permits, it can be handled from one source.

That's part of why Washington has had more businesses open per capita the past three years than any other state in the U.S. Another reason: A culture of innovation. "Innovation is the common thread throughout every industry in Washington," says Juli Wilkerson, who heads up Washington's economic development office. Venture capital spending in the state is the fifth-highest in the country, totaling \$2.6 billion the past three years.

This climate of creativity dates back to the early 1900s, when John Nordstrom opened his first shoe store, William Boeing built his first airplane and Friedrich Weyerhaeuser built the world's largest saw mill of its time. Today, Nordstrom, Boeing and Weyerhaeuser have combined sales of \$90 billion.

Another attractive part of Washington's economy is its low energy costs—28% below the national average last year, according to economic research firm Moody's Economy.com. The state's energy costs are the sixth-lowest in the country. Power costs for fellow Pacific-coaster California are twice as high.

No wonder Washington is booming. "Businesses that we are competing for now typically tell us that they have eliminated California from their thinking because of the time that it takes to get what they need to construct or expand and the cost of doing business," says Gregoire.

Washington is also prime territory for companies looking to do business in both Asia and Europe. The Seattle-Tacoma port is the fourth largest in the United States, behind Long Beach, Calif., Los Angeles and New York.

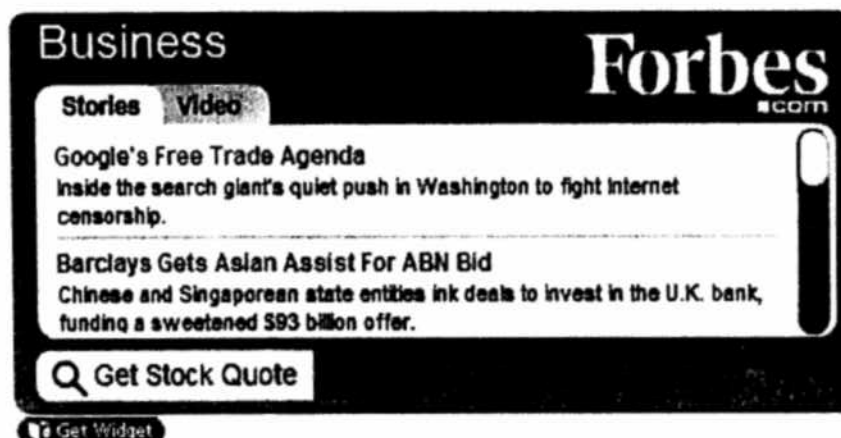
As the birthplace of some of the world's most powerful companies, Washington is also home to many of the world's richest individuals—including Microsoft's Bill Gates and Paul Allen, Amazon.com's Jeffrey Bezos, cable magnate Craig McCaw and Starbucks founder Howard Schultz. This is helping spur more economic activity in the region. "We want to be a center for global health," says Gregoire.

Helping to fuel the idea of a Washington as a global health center is the Bill & Melinda Gates Foundation, based in Seattle. The foundation, which strives to enhance health care around the world, has an endowment of \$33 billion. Seattle is also home to the Fred Hutchinson Cancer Research Center, one of the leading cancer research institutes in the world.

With a highly educated work force and a pro-business regulatory environment, Washington is poised to remain one of the best states to do business in—and to climb even higher on next year's list.

In Pictures: The Best States For Business

Table: The Best States For Business



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Chinese and Singaporean state entities ink deals to invest in the U.K. bank, funding a sweetened \$93 billion offer.

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Forbes: Special Report

The Best States For Business

OVERALL RANK	2006 RANK	STATE	BUSINESS COSTS RANK ¹	LABOR RANK ²	REGULATORY ENVIRONMENT RANK ³	ECONOMIC CLIMATE RANK ⁴	GROWTH PROSPECTS RANK ⁵	QUALITY OF LIFE RANK ⁶	POPULATION	GROSS STATE PRODUCT (\$BIL)	FIVE-YEAR CHANGE (%)	GOVERNOR
1	1	Virginia	17	5	1	11	8	6	7,644,230	335	4.4	Tim Kaine
2	4	Utah	12	11	17	9	16	12	2,514,200	81	3.5	Jon Huntsman
3	3	North Carolina	6	22	2	27	5	30	8,783,550	336	3.7	Michael Easley
4	2	Texas	21	26	7	10	2	28	23,261,060	888	3.9	Rick Perry
5	12	Washington	33	4	5	16	4	32	6,369,300	256	3.0	Christine Gregoire
6	6	Idaho	11	10	30	3	23	27	1,462,790	45	4.6	C.L. Otter
7	9	Florida	31	15	12	1	3	35	18,138,140	616	4.9	Charlie Crist
8	5	Colorado	35	2	15	33	1	23	4,736,630	206	3.4	Bill Ritter
9	13	North Dakota	5	37	16	11	42	14	636,480	22	3.5	John Hoeven
10	14	Minnesota	32	13	19	23	26	1	5,171,890	224	3.8	Tim Pawlenty
11	8	Delaware	7	14	32	39	14	15	854,950	52	3.5	Ruth Ann Minner
12	11	Maryland	41	3	24	8	15	21	5,642,140	228	4.0	Martin O'Malley
13	20	Tennessee	3	39	13	15	21	37	6,011,440	215	4.1	Phil Bredesen
14	18	New Hampshire	39	1	42	14	13	5	1,320,830	54	4.1	John Lynch
15	10	Georgia	23	25	4	34	17	29	9,228,230	345	3.3	Sonny Perdue
16	22	Missouri	14	20	8	44	37	17	5,831,010	199	2.3	Matt Blunt
17	7	Nebraska	15	36	11	30	38	13	1,767,360	66	3.3	David Heinemeier
18	15	Arizona	30	6	37	6	11	40	6,118,130	212	5.5	Janet Napolitano
19	16	New Jersey	46	9	33	25	7	3	8,770,910	425	3.7	Jon Corzine
20	21	Kansas	29	18	8	49	22	18	2,750,080	99	3.2	Kathleen Sebelius
21	24	Arkansas	9	40	22	17	9	45	2,805,840	80	3.8	Mike Beebe
22	26	Nevada	19	24	31	6	10	48	2,483,120	106	7.0	Jim Gibbons
23	27	South Carolina	20	28	6	36	17	43	4,296,160	133	3.0	Mark Sanford
24	25	Iowa	8	43	26	22	44	11	2,978,920	111	4.2	Chet Culver
25	17	South Dakota	1	31	45	17	35	24	778,410	29	4.2	Mike Rounds
26	29	New Mexico	10	34	43	5	6	50	1,952,650	62	4.1	Bill Richardson
27	32	Indiana	4	46	18	40	39	20	6,298,140	226	3.4	Mitchell Daniels
28	31	Oregon	26	7	34	32	19	38	3,684,490	134	3.8	Ted Kulongoski
29	23	Wyoming	2	35	48	4	36	39	512,830	23	4.2	Dave Freudenthal
30	19	Oklahoma	18	47	14	20	30	36	3,564,570	104	2.8	Brad Henry
31	28	Connecticut	44	8	40	37	24	4	3,528,260	189	3.2	M. Jodi Rell
32	30	Vermont	45	12	35	26	40	10	624,680	22	3.8	Jim Douglas
33	35	New York	48	33	20	21	26	19	19,261,520	947	3.9	Eliot Spitzer
34	36	California	50	17	39	17	12	26	36,460,740	1,606	4.5	Arnold Schwarzenegger
35	40	Alabama	27	45	23	23	20	41	4,599,260	140	3.9	Robert Riley
36	37	Massachusetts	49	19	29	47	29	2	6,403,120	322	2.9	Deval Patrick
37	42	Hawaii	47	16	38	2	40	33	1,279,100	49	4.1	Linda Lingle
38	34	Ohio	36	42	8	45	49	9	11,489,710	416	2.6	Ted Strickland
39	41	Pennsylvania	38	31	27	35	46	7	12,466,570	458	2.9	Edward Rendell

OVERALL RANK	2006 RANK	STATE	BUSINESS COSTS RANK ¹	LABOR RANK ²	REGULATORY ENVIRONMENT RANK ³	ECONOMIC CLIMATE RANK ⁴	GROWTH PROSPECTS RANK ⁵	QUALITY OF LIFE RANK ⁶	POPULATION	GROSS STATE PRODUCT (\$BIL)	FIVE-YEAR CHANGE (%)	GOVERNOR
41	33	Kentucky	16	41	28	48	25	34	4,201,730	133	3.2	Ernie Fletcher
42	38	Montana	24	21	47	13	48	42	942,050	27	4.3	Brian Schweitzer
43	48	Mississippi	13	48	25	40	34	47	2,935,350	71	2.2	Haley Barbour
44	39	Wisconsin	34	38	44	38	33	8	5,563,380	209	3.3	Jim Doyle
45	43	Rhode Island	42	23	49	28	28	25	1,079,590	40	3.1	Don Carcieri
46	45	Michigan	40	44	3	50	47	31	10,139,150	365	2.1	Jennifer Granholm
47	47	Alaska	28	29	36	42	32	44	669,140	32	3.8	Sarah Palin
48	46	Maine	43	27	46	30	42	16	1,327,750	42	3.1	John Baldacci
49	50	Louisiana	22	50	41	43	45	49	4,467,120	126	-0.9	Kathleen Blanco
50	49	West Virginia	25	49	50	29	50	46	1,820,740	46	1.6	Joe Manchin III

1 Index based on cost of labor, energy and taxes.

2 Measures educational attainment, net migration and projected population growth.

3 Measures regulatory and tort climate, incentives, transportation and bond ratings.

4 Reflects job, income and gross state product growth as well as unemployment and presence of big companies.

5 Reflects projected job, income and gross state product growth as well as business openings/closings and venture capital investments.

6 Index of schools, health, crime, cost of living and poverty rates.

Sources: Moody's Economy.com; Pollina Corporate Real Estate; Pacific Research Institute; Tax Foundation; CFED, Sperling's